

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

JAMES P. CALCARA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 04-0220-CV-W-HFS
	)	
PPG INDUSTRIES, INC. and	)	
CONTINENTAL CASUALTY COMPANY,) )	)	
	)	
Defendants.	)	

**MEMORANDUM TO COUNSEL**

The issue of relief is under advisement. In dollar amounts the major issue remaining is whether there should be an offset against money due under the Policy (not the Supplemental Policy) for recoveries that could be made under workers compensation. A pertinent ruling from the Missouri Court of Appeals could be handed down any day, but of course could be significantly delayed.

This litigation will necessarily be resolved some day, either by settlement or failure to litigate further. In the interest of advancing discussion between the parties I will state my current intentions regarding the various issues. Obviously this is subject to rethinking, in light of the record and case law.

Based on the Policy language and the cases cited, there should be an offset under the Policy for amounts recoverable under workers compensation, even if a payment is not due because of late filing.

Absent an amended answer, there will probably not be an offset for the overpayment the defendant has briefed, although the amount seems not to be in dispute.

Before taking an offset for workers compensation there should, under the Leonard case, be a credit for attorneys fees paid or payable in order to obtain a recovery.

Prejudgment interest should be allowed.

Payment of the agreed amount will be required under the Supplemental Policy, with prejudgment interest.

An order for future payments until age 65 is probably appropriate, reserving for defendant insurer the right to reopen the issue of disability if plaintiff's condition allegedly changes for the better.

Plaintiff's attorney fee claim here may be filed and will be considered as to allowability and amount after judgment indicating the amount of recovery.

I reiterate the hope that this case, filed in 2004, can be promptly settled by negotiation.

/s/ Howard F. Sachs  
HOWARD F. SACHS  
UNITED STATES DISTRICT JUDGE

January 9, 2008

Kansas City, Missouri